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He is a very good
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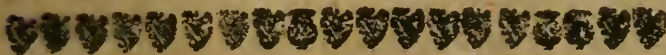
The
LEARNED
READING
Of

Sir Francis Bacon,

One of her Majesties learned Coun-
sell at Law, upon the Statute of
U S E S:

Being his double Reading to the Honou-
rable Society of GRAYES Inne.

Published for the Common good.



L O N D O N :
Printed for *Mathew Walbancke*, and *Laurence*
Chapman. 1642.





The
 Learned Reading
 of Sir
 FRANCIS BACON,
 upon the Statute of Vses.



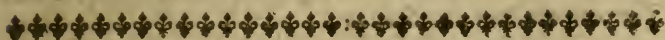
Have chosen to Read upon the Law of Vses made 27. *Hen.8* a Law whereupon the Inheritances of this Realme are tossed at this day like a Ship upon the Sea, in such sort that it is hard to say which Barke will sinke, and which will get to the Haven, that is to say, what assurances will stand good, and what will not; whether is this any lack or default, in the Pilots their grave and learned Judges: but the Tydes and Currents of received errours, and unwarranted and abusive experience, have bin so strong, as they were not able to keepe a right course according to the Law, so as this Statute is in great part, as a Law made in the Parliament,

held 35. *Regina*, for in 37. *Regina*, by the notable judgement upon solempne Arguments, of all the Judges assembled in the Exchequer Chamber, in the famous case betweene *Dillon* and *Frayne*, concerning an assurance by *Chudley*: this Law began to be reduced to a true and sound Exposition, and the false and perverted Exposition, which had continued for so many yeares, but never countenanced by any rule or authority of weight, but onely intertaind in a popular conceipt, & in practice at adventure grew to be controule, since which time (as it cometh to passe alwaies upon the first reforming of inveterate errors) many doubts, and perplexed Questions have risen, which are not yet resolved nor the Law thereupon settled: The consideration whereof moved me to take the occasion of performing this particular duty to the House, to see if I could by my travell, bring to a more generall good of the Common wealth.

Herein though I could not be ignorant of the difficulty of matter, which he that taketh in hand shall soone find, or much lesse of my owne unablennesse, which I had continuall sence and feeling of; yet because I had more meanes of absolution then the younger sort, and more leasure then the greater sort, I did thinke it not impossible to worke some profitable effect, the rather because where an inferior wit is bent, and conversant upon one Subject, he shall many times with patience and meditation dissolve, and undoe many of the knots which a greater wit, distracted with many matters would rather cut in two then unknit at the least if my intention or judgement be too barren, or too weake; yet by the benefit of other Arts, I did hope to dispose or digest, the authorities or Opinions which are in Cases of use in such order and method, as they should take light one from another, though they tooke no light from me. and like to the matter of my Reading shall my manner be, for my meaning is to revive and recontinue the antient forme of Reading, which you may see in *Mr. Fro-wickers*, upon the Privilege, and all other Readings of antient time, being of lesse ostentation and more fruit, then the manner lately accustomed, for the use then was substantially

to

to expound the Statutes, by grounds and diversities, as you shall find the Readings still to run upon case of the like Law, and contrary Law, whereof the one includes the learning of a difference, and not to stir concise and subtile doubts, or to contrive tedious and intricate Cases, whereof all saving one are buried, and the greater part of that one case which is taken, is commonly nothing to the matter in hand, but my labour shall be in the antient course, to open the Law upon doubts, and not doubts upon the Law.



Expositio Statuti.

THe Exposition of this Statute consists upon the matter, without the Statutes, upon the matter within the Statute.

Three things concerning these Statutes, and all other Statutes which are helpes and inducements to the right understanding of my Statute; and yet are no part of the Statute it selfe.

The consideration of the Statute at the Common Law.

The consideration of the mischief which the Statute intendeth to redresse, as any other mischief, which an Expositor of the Statute this way or that way may breed.

Certaine Maximes of the common Ley, touching Exposition of Statutes: having therefore framed fixe divisions according to the number of Readings upon the Statute it selfe, I have likewise divided the matter without the Statute into fixe Introductions or Discourses, so that for every dayes Reading I have made triple proposition.

1. *Vn Preface, or Introduction.*
2. *Vn Division upon the Law it selfe,*
3. *A few brief Cases, for Exercise and Argument.*

The last of which I would have forborne, and according to
the

the ancient manner, You should have taken some of my points upon my Divisions, one, two, or more as you should have thought good, save that I had this regard, that the younger sort of the Barré were not so conversant upon matters upon the Statutes, and for that Cause I have interlaced some matters at the Common Law that are more familiar within the books,

1. The first matter I will Discourse unto you, is the nature and definition of an use, and his Incession and Progression before the Statute.

2. The Second Discourse shall be of the second spring of this Tree of Uses since the Statute.

3. The Third Discourse shall be of the Estate of the assurance of this Realme at this day upon Uses, and what kind of them is convenient and reasonable, and not fit to be touched, as far as sense of Law and naturall construction of the Statute will give leave, and what kind of them is convenient and meete to bee suppressed.

4. The Fourth Discourse shall be of certaine Rules and Expositions of Lawes applyed to this present purpose.

5. The Fifth Discourse shall bee of the best course to remedy the same inconveniences now a foot, by construction of the Statute, without offering violence to the letter or sense.

6. The Sixt and last Discourse shall be of the best course to remedy the same inconveniences, and to declare the Law by Act of Parliament, which last I thinke good to reserve and not to publish.

The nature of a use is best discerned by considering what it is not, and then what it is, for it is the nature of all humane Science, and knowledge to proceed most safely by Negative and exclusive.

First, use is no right, title, or interest in Law, and therefore Master Attorney who read upon this Statute said well, that there are but two rights.

Ius in Re.

Ius ad Rem.

The one is an Estate which is *Ius in Re*, the other a demand

mand which is *Ius ad Rem*, but a use is neither, so that in 24. H. 8. it is said that the saving of the Statute of I. R. 3. which saveth any right or interest of Intayle, must be understood of Intayles of the possession, and not of the part of the use, because a use is no right nor interest; so againe, you see that *Littletons* conceipt, that an use should amount to a Tenancy at will, whereupon a release might well inure, because of privity is controled by 4. Et 5. H. 7. and diverse other bookes, which said that *Cestuy que use* is punishable in an Action of Trespasse towards the Feoffees onely 5. H. 5. seemeth to be at some discord with other Bookes where it is admitted for Law, that if there be *Cestuy que use* of an Advowson, and hee bee out-lawed in a personall Action, the King should have the presentment, which Case Master *Evans* in the argument of *Chudleyes* Case did seeme to reconcile this where *Cestuy que use* being utlaid, had presented in his owne name, there the King should remove his incumbent, and no such thing can be collected upon that Booke, and therefore I conceive the errour grew upon this, that because it was generally thought, that a use was but a penancy of profits, and then againe because the Law is that upon Utlayers, upon personall Actions, the King shall have the penancy of profits, they tooke that to bee one, and the selfe same thing which *Cestuy que use* had, and which the King was intituled unto which was not so, for the King had remedy in Law for his penancy of profits, but *Cestuy que use* had none, the Bookes goe further and say, that a use is nothing, as in 2. H. 7. *Dett fuit Port*, and counted *Sur leas* for yeares rent &c. the Defendant pleaded in Barre, that the Plaintiffe *Nihil habuit tempore divisionis*, the Plaintiffe made a speciall replication, and shewed that he had no use and issue joyned upon that, wherefore it appeareth, that if hee had taken issue upon the defendants Plea, it should have bin found against him: So againe in 4. *Regina*, in the Case of the Lord Sands, the truth of the case was a Fine leavied by *Cestuy que use* before the Statute, and this comming in question since the Statute upon an averment by the Plaintiffes *Quod partes finis nihil habuerint*,

it is said that the Defendant may shew the speciall matter of the use, and it shall be no departure from the first pleading of the same, and it is said further that the averment given in 4. H. 7. *Quod partes finis nihil habuerint, nec in possessione, nec in usu* went out upon this Statute of 27. Hen. 8. and was no more now to be accepted; but yet it appeares, that if issue had bin taken upon the generall averment, without the speciall matter shewed, it should have bin found, for him that tooke the averment because a use is nothing, but these bookes are not to be taken generally or grossly, for wee see in the same bookes, when an use is specially alleadged, the Law taketh knowledge of it, but the fence of it is, that use is nothing for which remedy is given by the course of the Common Law, so as the Law knoweth it, but protects it not; and therefore when the question commeth whether it hath any being in Nature and Conscience the Law accepteth of it, and therefore *Littletons* Case is good Law, that hee which hath but forty shillings Free-hold in use, shall be sworne in an inquest, for it is saied *Secundum dominium laterale*, and not *Secundum dominium legitimum, nam natura dominus est quia fructum ex re percipit*. And some doubt upon Subsidies and Taxes *Cestuy que use* should be valued as an owner: So likewise if *Cestuy que use* had resolved his use unto the Feoffee for sixe pound, or contracted with a stranger for the like some, there is no doubt but it is a good construction, whereon to ground an Action upon the Case, for mony for release of a Suite in the Chancery is a good *quid pro quo*, therefore to conclude, though a use be nothing in Law to yeeld remedy by course of Law, yet it is somewhat in reputation of Law and Conscience, for that may be somewhat in conscience which is nothing in Law, like as that may be something in Law which is nothing in Conscience; as if the Feoffees had made a feoffment over in Fee, *Bona fide*, upon good consideration, and upon a *Subpoena* brought against them, hee pleaded this matter in Chancery, this had beene nothing in Conscience, not as to discharge them of damages.

A second negative fit to be understood is, that a use is no
Covin,

Covin, nor it is no collusion, as the word is now used, for it is to be noted, that where a man doth remove the state and possession of Land, or goods out of himselfe unto another upon trust, it is either a speciall trust, or a generall trust.

The speciall trust is either $\left\{ \begin{array}{l} \text{Lawfull,} \\ \text{Or} \\ \text{Unlawfull.} \end{array} \right\}$

The speciall trust Unlawfull, is according to the Case provided, for by ancient Statutes of the profits, as where it is to defraud Creditors, or to get men to maintaine suites, or to defeat the tenancy to the precipe, or the Statute of *Mortmaine*, or the Lords of their wardships or the like, and those are termed Frauds, Covins, or Collusions.

The speciall trust Lawfull is, as when I infeofee some of my friends, because I am to goe beyond the Seas, or because I would free the Land from some severall Statute, or Bond which I am to enter, into or upon intent to be infeofed, or intent to vouched, and so to suffer a common Recovery, or upon intent that the Feoffees shall infeofee over a Stranger, and infinite the like intents and purposes, which fall out in mens dealings and occasions, and this wee call Confidence, and the Bookes doe call them intents, but where the trust is not speciall, nor transitory, but generall and permanent, there it is a use; and therefore these three are to be distinguished, and not confounded by Covin-Confidence, use.

So as now we are come by Negatives to the Affirmative, what a use is agreeable to the definition in *Plowden*, 352. *De Lameris Case*, where it is said:

Use is a trust reposed by any person in the Terre-tenant, that he may suffer him to take the profits, and hee that will performe his intent. But it is a shorter Speech to say, that

Ufus est dominium fiduciarium;

Use is an owners life in trust:

So that *Ufus est status, sive possessio totius, differ. secundum*

admirationem fore quam secundum naturam rei, for that one of them is in Court of Law, the other in court of Conscience; and for a trust which is the way to an use, it is exceeding well defined by a Civilian of great understanding:

Fides est obligatio Conscientia unius ad intentionem alterius.

And they have a good division likewise of Rights.

Ius precarium.

Ius fiduciarium.

Ius legitimum.

1. A right in courtesie, for the which there is no remedy at all.
2. A right in trust for which there is a remedy, onely but in Conscience.

3. A right in Law.
- So much of the nature and definition of an use.

It followeth to consider the parts and properties of an use wherein by the consent of all Bookes, and it was distinctly delivered by Justice *Walmeley*, in 36. *Elizabeth*.

That a trust consisteth upon three parts. The First, that the Feoffee will suffer the Feoffer to take the profits.

The Second, that the Feoffee upon request of the Feoffer, or notice of his Will, will execute the Estates to the Feoffer, or his Heires, or any other by his direction.

The Third, that if the Feoffee be disleised, and so the Feoffer disturbed, the Feoffee will re-enter, or bring an action to re-continue the possession, so that those three, pernaney of Profits, execution of Estates, and defence of the Land, are the three poynts of trust.

The properties of an use they are exceeding well set forth, by former Justice in the same Case, and they be three,

1. Uses (saith he) are created by Confidence.
2. Pressed by privity, which is nothing else but a continuance.

Of

Of the Confidence without interruption and ordered and guided by Conscience : either by the private Conscience of the Feoffee ; Or the generall Conscience of the Estate which is *Chancery*.

The two former of which (because they bee matters more thoroughly beaten, and wee shall have occasion to handle them) we will not now debate upon.

But the third we will speake somewhat of both, because it is a key to open many of true reasons, and termings of uses, and because it tendeth to decide out great and principall doubts at this day.

Cooke Soliciter entring into his Argument of *Chudleyes* Case, said sharply and fitly, I will put never a Case but shall be of an use, for a use in Law hath no fellow; meaning that the learning of uses is not to bee matched with other Learnings : *Anderson* chiefe Justice in the Argument of the same Case, did truly and profoundly controule the Vulgar opinion collected upon the fifth *E. 4.* that there might be *Possessio fratris* of a use, for he said that it was no more but that the Chancellee would consult with the Rules of Law, where the intention of the parties did not specially appeare, and therefore the private conceipt which *Glanville* Justice cited in the 42. *Regina* in the case of *Corbet*, in the Common Plea of one of *Lincolnes Inne*, whom he named not, but seemed to allow is not sound, which was, that a use was but a limitation, and did ensue the nature of a possession.

This very conceipt was set on foot in 27. *H. 8.* in the Lord *Darcies* Case, in which time they began to heave at uses, for there after the Realme had many ages together put in ure the passage of uses by Will; they began to argue that an use was not deviseable, but that it did ensue the nature of the Land, and the same yeare after this Statute was made; so that this opinion seemeth ever to bee, and for ever to an Act of Parliament touching uses; and if it bee so meant, now meant I like it well : but in the meane time the Opinion it selfe is to be recited, and because in the same Case of *Corbet*

3. reverent Judges of the Court of Common Pleas, did de-

liver and publish their Opinion, though not directly upon
 the point adjudged, yet *obiter* as one of the Reasons of their
 judgement, that an use of Inheritance could not be limited to
 cease, and againe, that the limitation of a new use could not
 be to a Stranger, ruling uses meereley according to the ground
 of possession, it is worth the labour to examine, that learning
 by 3. *Hen. 7.* You may collect that if the Feoffees had bin
 disseised by the Common Law, and an Ancestor collaterall of
Cesty que use had released unto the disseisor, and his warrant-
 ty had attached upon *Cesty que use*, yet the Chancellour upon
 this matter shewed, would have not respect unto it, to com-
 pell the Feoffees to execute the Estate unto the disseisor, for
 there the case being, that *Cesty que use* Intayle, having made
 an assurance by fine and recovery, and by warranty which
 descended upon his issue, two of the Judges held that the use
 is not extinct, and *Bryan* and *Hussey* that held the contrary
 said, that the Common Law is altered by the new Statute,
 whereby they admit, that by the Common Law that warrant-
 ty will not bind and extinct a right of a use, as it will doe a
 right of possession, and the reason is, because the Law of
 Collaterall garranty is a hard Law, and not to be considered
 in a Court of Conscience, in 5. *Edw. 4.* It is said that if *Cesty*
que use be attainted, *quare*, who shall have the Land, for the
 Lord shall not have the Land, so as there the use doth not
 imitate the possession, and the reason is, because the Lord hath
 a Tent is by Title, for that is nothing to the *Subpoena*, because
 the Feoffees intent was never to advance the Lord, but onely
 his owne blood, and therefore the *quare* of the Booke ariseth
 what the trust and confidence of the Feoffee did tie him to
 doe, as whether he should not sell the Land to the use of the
 Feoffees Will, or in pious uses, so favourably they tooke the
 intent in those dayes, as you find in 27. *H. 6.* that if a man
 had appointed his use to one for life, the remainder in Fee to
 another, and *Cesty que use* for life had refused, because the
 intent appeared not to advance the Heire at all, nor him in
 reversion, presently the Feoffee should have the Estate for life
 of him that refused some waies to the behoofe of the Feoffer.

But to proceed in some better order towards the disproofe of this Opinion of limitation, there be foure points wherein we will examine the nature of uses.

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|-----------------------------------|----|
| <i>The raising of them.</i> | 1. |
| <i>The preserving of them.</i> | 2. |
| <i>The transferring of them.</i> | 3. |
| <i>The extinguishing of them.</i> | 4. |

In all these Foure, you shall see apparantly that uses stand upon their owne reasons, utterly differing from Cases of possession, I would have one Case shewed by men learned by the Law, where there is a deed, and yet there need a consideration, as for paroll, the Law adjudgeth it too light to give a use without consideration, but a deed ever in Law imports a consideration, because of the deliberation and Ceremony in the confession of it, and therefore in 8. *Regina* it is solemnly agreed, that in the Queenes Case a false consideration if it bee of Record, will hurt the Patent, but want of consideration doth never hurt it, and yet they say that a Case is but a nimble and light thing, and now contrariwise it seemeth to bee weightier then any thing else, for you cannot weigh it up to raise it, neither by deed, nor deed inrolled without the weight of consideration, but you shall never find a reason of this, to the Worlds end, but in the Law, but it is a reason of *Chancery*, and it is this:

That no Court of Conscience will enforce *Omnium gratuitum*, though the intent appeare never so clearly where it is not executed, or sufficiently passed by Law, but if mony had beene paid, and so a person dampnified, or that it was for the establishment of his House, then it is a good matter in the *Chancery*: so againe I would see in the Lawes, a Case where a man shall take by a Conveyance, bee it by Deed, Livery, or Word that is not party to the grant, I doe not say that the delivery must be to him that takes by the Deed, for a Deed may be delivered to one man to the use of another; neither

neither doe I say that he must be party to the delivery of the Deed; for he in the remainder may take though hee be not party, but he must be party to the words of the grant; here againe the Case of the use goeth single, and the reason is, because a conveyance in use is nothing but a publication of the trust, and therefore so as the party trusted bee declared, it is materiall to whom the publication bee so much for the rayling of uses.

There is no Case in the Common Law, wherein notice simply and nakedly is materiall to make a Covin, or *particeps Criminis*, and therefore if the Heire which is in by discent, infeofee one which had notice of the disseisin, if he were not a *Disseisor de facto*, it is nothing: so in 33. H. 6. if a Feoffment be made upon collusion, and feoffee makes a feoffment over upon good consideration, the collusion is discharged, and it is not materiall if they had notice or no, so as it is put in 14. H. 8. if a sale be made in a Market over upon consideration, although it be to one that hath notice that they are stolen goods, yet the property of a Stranger is bound, though in the Booke before remembred 35. Hen. 6. some opinion to the contrary, which is clearely no Law, so in E. 3. if asslets discent to the Heire, and hee alien it upon good consideration, although it be to one that had notice of the Debt, or of the Warranty it is good enough. So if a man enter of purpose into my Lands, to the end that a Stranger which hath right, should bring his *Præcipe* and evict the Land, I may enter notwithstanding any such recovery, but if hee enter having notice that the Stranger hath right, and the Stranger likewise having notice of his entry, yet if it were not upon Confederacy or collusion betweene them it is nothing, and the reason of these Cases is, because the Common Lawlooketh no furtherthen to see whether the Act were meerely *Actus fictus in fraudem legis*, and wheresoever it findeth consideration given it dischargeth the covin.

But come now to the Case of use, and there it is otherwise, as it is in 14. H. 8. and 28. H. 8. and diverse other Bookes,

Bookes, which prove that if the Feoffee sell the Land for good consideration to one that hath notice, the Purchaser shall stand seized to the antient use, and the reason is because the *Chancery* looketh further then the Common Law, to the corrupt Conscience of him that will deale in the Land, knowing it in equity to bee anothers, and therefore if there were *Radix Amaraudinis*, the consideration purgeth it not, but it is at the perill of him that giveth it, so that consideration, or no consideration is an issue at the Common Law, but notice on notice is an issue in the *Chancery*, and so much for the preserving of uses.

For the transferring of uses there is no case in Law whereby an Action is transferred but the *Subpaena*, in case of use was alwayes assigneable, nay further you find twice 27. *H. 8. Fol. 10. Pla. 9. Fo. 30. and Pla. 21.* that a right of use may be transferred, for in the former case *Montague* maketh the objection and saith, that a right of use cannot be given by Fine, but to him that hath the Possession, *Fitz Herbert* answereth, Yes well enough; *quare* the reason saith the booke.

And in the latter Case where *Cestuy que use* was infeoffed by the Disseisor of the Feoffee, and made a Feoffment over: *Englefield* doubted whether the second Feoffee should have the use, *Fitz Herbert* said, I marvel you will make a doubt of it, for there is no doubt but the use passeth by the Feoffment to the Stranger, and therefore this Question needeth not to have beene made; so the great difficulty in 10. *Reginae, Declamers Case*, where the case was in effect Tenant in tayle of an use, the remainder in Fee, Tenant in tayle made a Feoffment in Fee, Tenant, by the Statute of *I. R. 3.* and the Feoffee infeoffed him in the remainder of the use, who made it over, and there question being made whether the second Feoffee should have the use in remainder, it is said that the second Feoffee must needs have the best

right in Conscience, because the first Feoffee claimed nothing but in trust, and the rest *que use* cannot claime it against h's sale, but the reason is apparant (as was touched before) that a use in *Esse* was but a thing in action, or in suite to be brought in Court of Conscience, and where the *Subpœna* was to be brought against the Feoffee out of possession to recontinue the Estate, alwayes the *Subpœna* might bee transferred, for still the Action at the Common Law was not stir'd, but remained in the Feoffee, and so no mischief of maintenance or transferring rights.

And if a use being but a right may bee assigned, and pass'd over to a Stranger, a *multo fortiori*, it may bee limited to a Stranger upon the privity of the first conveyance, as shall bee handled in another place, and as *Glanville* Justice said, hee could never find by any booke, or evidence of antiquity, a contingẽ use limited over to a Stranger, I answer, First it is no marvell that you find no Case before *E. 4.* time of contingent uses, where there bee not fixe of uses, in all, and the reason I doubt was, men did choose well whom they trusted, and trust was well oblierved, and at this day in *Ireland*, where uses be in practise, Cases of uses come seldome in question, except it bee sometimes upon the alienations of Tenants in taylor by Fine, that the Feoffees will not bee brought to execute Estates, to the disheritance of antient blood, but for experience, and the conveyance there was nothing more usuall in *Obyts*, then to will the use of the Land to certaine persons and their heires, so long as they shall pay the *Chancery* Priests their Wages, and in default of payment to limit the use over to other persons and their Heires, and so in case of forfeiture through many degrees, and such conveyances are as antient as *R. 2.* time.

Now for determining and extinguishing of uses, I put the case of collaterall garranty before, and to that the
notable

notable case of 14. H. 8. *Haussemes* Case, where this very point was in the principall case, for a Rent out of Land, and the Land it selfe in case of possession cannot stand together, but the rent shall bee extinct, but there the case is, that the use of the Land, and the use of the Rent shall stand well enough together, for a Rent charge was granted by the Feoffee to one, that notice of the use, had and ruled, that the Rent was to the antient use, and both uses were in *Esse simul et semel*, and though *Brudnell* chiefe Justice urged the ground of possession to bee otherwise, yet he was over-ruled by the other three Justices, and *Brooke* said unto him, he thought he argued much for his pleasure; and to conclude, wee see the thing may be avoyded and determined by the Ceremonies and Acts, like unto those by which are created and raised, that which passeth by Livery ought to be avoyded by entry; that which passeth by Grant, by claime; that which passeth by way of charge, determineth by way of discharge: and so a use which is raised but by a declaration or limitation, may cease by words of Declaration or Limitation, as the Civill Law saith, in his *magis consentaneum est, quam ut iisdem modis res dissolvantur a quibus constituentur*: for the conception and progression of uses, I have for a president in them other Lawes, because States and Common-wealths have common accidents, and I find in the Civill Law, that that which commeth nearest in name to the use, is nothing like in matter, which is *Vsus fructus*, for *Vsus fructus et dominium* is with them, as with their particular tenancy and inheritance, but that which resembleth the use most is *fidei Commissio*, and therefore you shall finde in *Ius Lib. 2.* That they had a forme in Testaments, to give Inheritance to one to the use of another. *Heredem constituo Cajum rogo autem te Caie, ut hereditatem restituas*, and the Text of the Civilians saith, that for a

Great time if the Heire did not as he was required *Cestuy que use*, had no remedy at all, untill about the time of *Augustus Caesar*; there grew in custome a flattering forme of trust, for they penned it thus: *Rogo te per salutem Augusti* or, *Per fortunam Augusti* &c. whereupon *Augustus* tooke the breach of trust to sound in derogation of himselfe, and made a Commission to the Prætor to give remedy in such Cases, whereupon within the space of a hundred yeares, these trusts did spring and speed so fast, as they were forced to have a particular Chancellor onely for uses, who was called *Prætor fidei Commissarius*, and long after the inconvenience of them being found, they resorted unto a Remedy much like unto this statute, for by two Decrees of Senate, called *Senatus consult. Trebelsianum et Pegasianum*, they made *Cestuy que use* to be Heire in substance. I have sought likewise, whether there bee any thing which maketh with them in our Law, and I finde the *Persian* chiefe Barron in the Argument of *Chudleyes* Case compareth them to Coppy-holders, and aptly for many respects.

First, because an use seemeth to bee an hereditament in the L. Court.

Secondly, this concept of Limitation hath beene troublesome in Coppy-holders as well as in Uses, for it hath beene of late dayes questioned, whether there should be Tenancy by the Courtesie, dis-continuances, and recoveries of Coppy-holders, in the nature of Inheritances at the Common Law, and still the judgements have weighed, that you must have particular Customes in Coppy-holds, as well as particular Reasons of Conscience in use, and the limitation recited.

And Thirdly, because they both grew to no remedy at all against the Lord, and were as tenancy at will, afterwards it grew to have remedy in *Chancery*, & afterwards against their Lords by Trespasse, at the Common-Law,

Law, and now lastly the Law is taken by some, that they have remedy by *Ejectione firma* without a speciall custome of leasing, doe no doubt in uses, at the first the *Chancery* made question to give remedy, untill uses grew more generall, and the *Chancery* more eminent, and then they grew to have remedy in Conscience, but they could never obtaine any manner of Remedy at the Common Law, neither against the Feoffee, nor against Strangers, but the Remedy against the Feoffee, was best by *Subpœna*, and the remedy against Strangers to the Feoffee.

Now for the Cases whereupon uses were but in practice, *Cooke* in his Reading doth say well, that they were produced sometimes for feare, and many times for fraud; but I hold that neither of these Cases were so much the reasons of uses, as another reason in the beginning, which was, that Lands by the Common Law of *England* were not Testamentary, or deviseable, and of late yeares since the Statute, the Case of the conveyance for sparing of Purchases, and Execution of Estates, and now last of all expresse liberty of Will in mens minds, affecting to have the assurance of their Estate, and Possession to be revokeable in their owne times, and irrevocable after their owne times.

Now for the Commencement and proceeding of them, I have considered what it hath beene in courte of Common Law, and what it hath beene in course of Statute for the Common Law, the conceipt of *Shelly* in 24. H. 8. and of *Polard* in 27. H. 8. seemeth to me to bee without ground, which was, that the use succeeded the Tenure, for that the Statute of *Quia emptores terrarum*, which was made 18. E. 1. had taken away the Tenure betweene the Feoffor and the Feoffee, and left it to the Lord *Paramount*, they said that the Feoffment being then meerely without consideration, should therefore intend an use to the Feoffor, which cannot be, for by that

reason if the Feoffment before the Statute had beene made *Tenendum de Capitalibus Dominis*, as it must be; there should have beene an Use unto the Feoffer before that Statute. And againe, if a Grant had beene made of such things as consists not in Tenure, as Advowsons, Rents, Villeins and the like, there should have beene a Use of them, wherein the Law was quite contrary; for after the time that Uses grew common, it was neverthelesse a great doubt whether things that did lye in Grant, did not carry a consideration in themselves because of the Deed.

And therefore I do judge that the intendment of a Use to the Feoffer where the Feoffment was made without consideration grew long after when Uses waxed general; and for this reason, because when Feoffments were made, and that it rested doubtfull whether it were in use or in Purchase, because Purchases were things notorious, and Uses were things secret. The Chancellor thought it more convenient to put the Purchasor to proove his consideration, then the Feoffer and his Heires to prove the trust, and so made the indentment towards the Use, and put the prooffe upon the Purchasor.

And therefore as Uses were at the Common Law in reason, for whatsoever is not by Statute, nor against Law may be said to be at the Common Law, and both the generall trust and the speciall, were things not prohibited by the Law, though they were not remedied by the Law; so the Experience and practice of Uses were not ancient, and my reasons why I think so, are these.

First, I cannot find in my Evidence before King R. 2. his time, the clause *ad opus et usum*, and the very Latin phrase was much purer, as you may see by *Bractons* Writing, and by ancient Patents and Deeds, and chiefly by the Register of Writs, which is good Latin; wherein this phrase (*ad opus & usum*) and the Words (*ad opus*) is a barbarous phrase, and like enough to be in the pennin

of some Chaplaine that was not much past his Grammer, where he had found *Opus & usus*, coupled together, and that they did governe an Ablative case, as they do indeed since this Statute, for they take away the Land and put them into a conveyance.

Secondly, I find in no private Act of Attainder in the clause of Forfeiture of Lands (S) which he hath in possession or in Use, untill *Ed. 4.* his Reigne.

Thirdly, I find the Word (*use*) in no Statute untill *7. Rich. 2. cap. 11.* of Provisoos, and in *15. Ric. 2.* of *Mortmaine*.

Fourthly, I collect out of *Cookes* speech in *8. Edw. 4.* where he sayth that by the advice of all the Judges, it was thought that the *Subpœna* did not lye against the Heire of the Feoffee which was in by Law, but *Cestuy que use* was driven to his Bill in Parliament, that Uses even in that time were but in their infancy; for no doubt but at the first the Chancery made difficulty to give Remedy at all, but to leave it to the particular Conscience of the Feoffee. But after the Chancery grew absolute, as may appeare by the Statute of *15. Hen. 6.* that complaints in Chancery should enter into Bond to prove their suggestions, which seemeth that the Chancery at that time began to imbrace too farre, and was used for vexation; yet neverthelesse it made scruple to give remedy against the Heire being in by Act in Law though he were privy, so that it cannot be that Uses had beene of any great continuance when they made a question: As for the Case of Matrimony, *Prelomti*, it hath no affinity with Uses, for where-soever there was remedy at the Common-Law by Action, it cannot be intended to be of the nature of a Use.

And for the Booke commonly vouched of *Ass.* where the Earle calleth the possession of a Conizee upon a Fine levied by consent an entry in *Anterdroit* and *44. of E. 3.* where.

where there is mention of the Feoffors that sued by petition to the King, they be but implications of no moment. So as it appeareth the first practice of Uses was about *Richard 2.* his time, and the great multiplying and over-spreading of them was partly during the Wars in *France*, which drew most of the Nobility to be absent from their Possessions, and partly during the time of the Trouble and Civill War betweene the two houses about the Title of the Crowne.

Now to conclude the Progression of Uses in course of Statutes, I do note three speciall points.

1. That a Use had never any force at all, at the Common-Law, but by Statute Law.

2. That there was never any Statute made directly for the benefit of *Cestuy que Use*, as that the Discent of an Use should toll an Entry, or that a Release should be good to the partner of the profits or the like; but alwayes for the benefit of Strangers and other persons against *Cestuy que use*, and his Feoffees: For though by the Statute of *Richard 3.* he might alter his Feoffees, yet that was not the scope of the Statute, but to make good his assurance to other persons, and the other came in *Et obliquo*.

3. That the speciall intent unlawfull and covenous was the Originall of Uses, though after it induced to the lawfull intent generall and speciall; For *5. Edward 3.* is the first Statute I finde, wherein mention is made of the taking of profits by one, where the Estate in Law is another.

For as to the opinion in *27. Henr. 8.* that in case of the Statute of *Marlebridge*, the Feoffors took the profits, it is but a conceite; for the Law is this day, that if a man infeoffee his Eldest Sonne within age, and without consideration, although the profits be taken to the use of the Sonne; yet it is a Feoffment within the Statute of *Religious*; and as for *7. Edward 1.* which prohi-

prohibits generally that Religious persons should not purchase *Arte vel ingenio*, yet it maketh no mention of a Use, but it saith, *Colore donationis termini vel alicujus tituli*, reciting there three formes of conveyances, the gift, the long Lease, and faigned Recovery, which gift cannot bee understood of a gift to a Stranger to their use, for that came to be holpen by 15. *Richard 2.* long after, but to proceed in 5. *Edward 3.* a Statute was made for the reliefe of Creditors against such as made covin gifts of their Lands, and goods, and conveyed their bodies into Sanctuaries, there living high upon others goods, and therefore that Statute made their Lands liable to their Creditors Executions in that particular Case, if they tooke the profits: In 5. *Richard 2.* a Statute was made for reliefe of those as had right of Action, against those as had renounced the tenancy of the *Præcipe* from them, sometimes by infeoffing great persons, for maintenance, and sometimes by secret Feoffments to others, whereof the Defendants could have no notice, and therefore the Statute maketh the recovery good in all Actions against the first Feoffees as they tooke the profits, and see that the Defendants bring their Action within a yeare at their expulsion 2. *Richard 2. Cap. 3. Session 2.* an imperfection of the Statute of 50. *Edward 3.* was holpen, for whereas the statute tooke no place, but where the Defendant appeared, and so was frustrated, the Statute giveth upon Proclamation, made at the Gate of the place priviledged, that the Land should be liable without apparence, in 7. *R. 2.*

A Statute was made for the restraint of Aliens, to take thy Benefices, or dignities Ecclesiasticall, or Farmes of Administration to them, without the Kings speciall Lycence, upon paine of the Statute of Provisors, which being remedied by a former Statute, where the Alien tooke it to his owne use: it is by that Statute remedied, where the Alien tooke it to the use of another, as it is

said in the Booke, though I ghesse, that if the Record were searched, it should be if any other purchased to the use of an Alien, and that the words (or to the use of another) should be (or any other to his use) 15. *Rich.* 2. *Cap.* 5. a Statute was made for the reliefe of Lords against *Mortmayne*, where Feoffments were made to the use of Corporations, and an Ordinance made that for Feoffments past, the Feoffees should before a day, either purchase Lycence to amortise them, or alien them to some other use, or other Feoffments to come, they should bee within the Statute of *Mortmayne*, 4. *Hen.* 4. *Cap.* 7. the Statute of 17. *Richard* 2. is enlarged in the limitation of time, for whereas the statute did limit the Action to be brought within the yeare of the Feoffment: This Statute in Case of a Disseisin extends the time to the life of the Disseisor, and in all other Actions, leaves it to the yeares, from the time of the Action growne 11. *Henry* 6. *Cap.* 3. that Statute of 4. *Henry* 4. is declared, because the conceipt was upon the Statute, that in Case of Disseisin the limitation of the life of the Disseisor went onely to the assise of *Non et disseisin*, and to no other Action, and therefore that Statute declareth the former Law to extend to all other Actions, grounded upon *Novel disseisin* 11. *Henry* 6. *Cap.* 5. A Statute was made for reliefe of him in remainder against particular Tenants, for Lives, or yeares, that Assigned over their Estates, and tooke the profits, and then committed wast against them, therefore this Statute giveth an Action of wast, being provisors of the profits, in all this course of Statutes no reliefe is given to Purchasors, that come in by the party, but to such as come in by Law, as Defendants in *Pracipes*, whether they be Creditors, Disseisors, or Lessors, and that onely of *Mortmayne*, and note also that they be all in Cases of speciall Covenous intents, as to defeate Executions, tenancy to the *Pracipe*, and the Statute of *Mortmayne*,

as Provisors from 11. *Henry 6.* to 1. *R. 3.* being the space of fifty yeares, there is a silence of Uses in the Statute Booke, which was at that time when no question they were favoured most, in 1. *Richard 3. Cap. 1.* com-meth the great Statute for reliefe of those that come in by the party, and at that time an use appeareth in his likenesse, for there is not a word spoken of taking the profits, to describe a use by, but of clayming to a use, and this Statute ordayned that all Gifts, Feoffments, Grants, &c. shall be good against the Feoffors, Dowers and Grantors, and all other persons clayming onely to their use, so as here the Purchasor was fully relieved, and *Cestuy que use* was *obiter* enabled to charge his Feoffees, because there were no words in the Statute of Feoffments, Grants, &c. upon good consideration, but generally in *Henry 7.* time, new Statutes were made for further helpe and remedy to those that came in by Act in Law, as first 11. *Henry 7. Cap. 1.* a *Formedon* is given without limitation of time against *Cestuy que use*, and *obiter*, because they make him a Tenant, they give him advantage of a Tenant, as of age and voucher, *quare 4. Henry 7. 17.* the Ward-ship of the Heire of *Cestuy que use*, is dying, and no Will declared is given to the Lord, as if he had dyed seised in Demeasne, and Action of wast given to the Heire against the Gardian, and dammages, if the Lord were barr'd in his writ of Ward, and reliefe is likewise given unto the Lord, if the heire holding the Knights service, be of full age 19. *Henry 7. Cap. 5.* there is reliefe given in three Cases, first to the Creditors upon matters of Record, as upon Recognizance, Statute, or Judgement, whereof the two former were not ayded at all by any Statute, and the last was ayded by a Statute of 50. *E. 3.* and 2. *Richard 2.* onely in Case of Sanctuary men. Secondly, to the Lords in soccage for their reliefe, and Herriots upon death, which was omitted in the 4. *Henry 7.* and lastly to the Lords

of Villeyns, upon a purchase of their Villeyns in use, 13. *Henry 8. Cap. 10.* a further Remedy was given in a Case, like unto the case of *Mortmayne*, for in the Statute of 15. *Richard 2.* remedy was given where the use came, *Ad manum mortuam*, which was when it came to some Corporation: now when uses were limited to a thing, Act, or worke, and to a body, as to the reparation of a Church, or an Abbot, or to a guild, or Fraternities, as are onely in reputation, but not incorporate, as to Parishes, or such guilds or Fraternities as are onely in reputation, but not incorporate that Case was omitted, which by this Statute is remedied, not by way of giving entry unto the Lord, but by way of making the use utterly voyd, neither doth the Statute expresse to whose benefit the use shall be made voyd, either the Feoffor, or Feoffee, but leaveth it to Law, and addeth a Proviso, that uses may bee limited twenty yeares from the gift, and no longer.

This is the whole course of Statute Law before this Statute, touching Uses, thus have I set forth unto you the nature and definition of an Use, the differences and trust of an Use and the parts and qualities of it, and by what Rules and termings Uses shall bee guided and ordered; by a President of them in our Lawes, the causes of the springing and spreading of Uses, the continuance of them, and the proceedings that they have had both in Common Law, and Statute Law, whereby it may appeare, that a Use is no more but a generall trust, when any one will trust the Conscience of another better then his owne Estate and Possession, which is accident or event of humane Society, which hath bin, and will be in all Lawes, and therefore was at the Common Law, which is common reason. *Fitz. Herbert* saith in the 14. *Henry 8.* common reason is Common Law, and not Conscience; but common reasons doth define that Uses should be remedied in Conscience, and not in Courts of Law,

Law, and ordered by Rules in Conscience, and not by streight Rules of Law; for the Common Law hath a kind of a Rule and survey over the *Chancery*, and therefore we may truly conclude, that the force and strength that a Use had or hath in Conscience, is by Common Law, and the force that it had or hath by Common Law is onely by Statutes.

Now followeth in time and matter, the consideration of this Statute of principall labour, for those former considerations, which we have handled serve but for introduction.

This Statute (as it is, the Statute which of all other hath the greatest power and operation over the Heritages of the Realme, so howsoever it hath beene by the humour of the time perverted in exposition, yet in it selfe is most perfectly and exactly conceived and penned of any Law in the Booke, induced with the most declaring and perswading Preamble, consisting and standing upon the wisest and fittest Ordinances, and qualified with the most fore-seeing and circumspect savings and promises, and lastly the pondred in all the words and clauses of it of any Statute that I find, but before I come to the Statute it selfe, I will note unto you three matters of Circumstance.

The time of the Statute.

1.

The Title of it.

2.

The President or patterne of it.

3.

For the time of it was in 27. *Henry 8.* when the King was in full peace, and a wealthy and flourishing Estate, in which nature of time men are most carefull of their Possessions, aswell because Purchases are most stirring, as againe, because the Purchaser when hee is full, is no lesse carefull of his assurance to his Children, and

of disposing that which he had gotten, then hee was of his bargaine for the compassing thereof.

About that time the Realme likewise began to be enfranchised from the Tributes of Rome, and the Possessions that had beene in *Mormayne* began to stirre abroad, for this yeate was the suppression of the smaller Houses of Religion, all tending to plenty, and purchasing, and this Statute came in consort with divers excellent Statutes, made for the Kingdome in the same Parliament, as the reduction of *Wales* to a more civill Government, the re-edifying of diverse Cities and Townes, the suppressing of depopulation and inclosures.

For the Title, it hath one Title in the Role, and another in course of Pleading, the Title in the Role is no solemne Title, but an Act title (5) an Act expressing an Order for Uses and Will, the Title in course of Pleading is, *Statutum de usibus, in Possessionem transferendis*, wherein *Walmesly Justice* noted well 4. *Regina*, that if a man looke to the working of the Statute, hee would thinke that it should be turned the other way, *De possessionibus ad usus transferendis*, for that is the course of the Statute, to bring Possession to the Use, but the Title is framed not according to the worke of the Statute, but according to the scope and intention of the Statute, *Nam quod primum est in intentione, ultimum est in operatione*, the intention of the Statute by carrying the Possession to the use, is to turne the use to a Possession, for the words are not *De possessionibus ad usus transferendis*, and as the Grammarian saith, *Præpositio ad, denotat notam actionis, sed præpositio (in) cum Accusativo denotat notam alterationis*, and therefore *Kingsmill Justice* in the same Case saith, that the meaning of the Statute was, to make a transubstantiation of the use unto a Possession; but it is to be noted, that Titles of Acts of Parliament, severally came in, but in the 5. *Henry 8.* for before that time that was but one Title of all the Acts made

made in one Parliament, and that was no Title neither, but a generall Preface of the good intent of the King, but now it is parcell of the Record.

For the President of this Statute upon which it is drawne, I doe finde by the first *Richard 3.* whereupon you may see the very mould whereon this Statute was made, that the said King having beene infeofed (before he usurped) to Uses, as it was ordained that the Land whereof he was joyntly infeofed as if hee had not beene named, and where he was solely infeofed, it should bee in *Cestuy que use*, in Estate as he had the use.

Now to come to the Statute it selfe, the Statute consisteth as other Lawes doe upon a Preamble, the Body of the Law, and certaine saving, and Premisses. The Preamble setteth forth the inconveniences, the Body of the Law giveth the Remedy, and the savings and Provisoestake away the inconveniences of the remedy; for new Lands are like the Apothecaries Druggs, though they remedy the Disease, yet they trouble the body, and therefore they use to correct with Spices, so it is not possible to find a Remedy for any mischief in the Common Wealth, but it will beget some new mischief, and therefore they spice their Lawes with Provisoesto correct and qualifie them.

The Preamble of the Law was justly commended by *Popham* chiefe Justice in 36. *Regina*, where hee saith, that there is little need to search and collect out of Cases before the statute, what the mischief was, which the scope of the Statute was to redresse, because there is a shorter way offered us, by the sufficiency and fulnesse of the Preamble, and therefore it is good to consider it, and ponder it thoroughly.

The Preamble hath three parts.

First a recitall of the principall inconveniences, which is the root of all the rest.

Secondly,

, 1.

2. Secondly, an enumeration of diverse particular inconveniences as branches of the former.
3. Thirdly, a taste or brieft note of the remedy that the Statute meaneth to apply; the principall inconvenience which is *Radix omnium malorum*, is the directing from the grounds and principalls of the Common Law, by inventing a meane to transfer Lands and Inheritances without any solemnity, or Act notorious, so as the whole Statute is to be expounded strongly towards the extinguishment of all conveyances, whereby the Free hold, or Inheritance may passe without any new confessions of Deeds, Executions of Estate or entreyes, except it bee where the Estate is of privity and dependance one towards the other, in which Cases *Mutatis mutandis*, they might passe by the Rules of the Common Law.

The particular inconveniences by the Law rehearsed may bereduced into foure heads.

1. First, that these conveyances in use are weake for consideration.
2. Secondly, that they are obscure and doubtfull for tryall.
3. Thirdly, that they are dangerous for want of notice and publication.
4. Fourthly, that they are exempted from all such Titles as the Law subjecteth Possessions unto.

The first inconvenience lighteth upon Heires.

The second upon Jurors and Winesses.

The third upon Purchasors.

The fourth upon such as come in by gift in Law.

All which are persons that the Law doth principally respect and favour.

For the first of these are three impediments (to the judgement of man) in disposing justly and advisedly of his Estate. (5)

First, trouble of mind.

Secondly, want of time.

Thirdly, of wise and faithfull Counsell about him.

1.

2.

3.

And all these three the Statute did finde to bee in the disposition of an Use by Will, whereof followed the unjust dis-inheresin of Heires, now the favour of Law unto Heires appeareth in many parts of the Law, as the Law of discent priviledgeth the Possession of the Heire, against the entry of him that hath right by the Law, no man shall warrant against his Heire, except he warrant against himselfe, and diverse other Cases too long to stand upon, and wee see the antient Law in *Glanvills* time was, that the Ancestor could not dis-inherit his Heire by Grant, or other Act executed in time of sickness, neither could he alien Land which had descended unto him, except it were for consideration of money or service, but not to advance any younger Brother without the consent of the Heire.

For tryalls, no Law ever tooke a straighter course, that Evidence should not be perplexed, nor Juries inveigled, then the Common Law of *England*, as on the other side, never Law tooke a more precise and straight course with Juries, that they should give a direct verdict, for whereas in manner all Lawes doe give the Tryers, or Jurors (which in other Lawes are called Judges *De facto*) to give no liquet, that is, to give no verdict at all, and so the Case to stand abated; our Law enforceth them to a direct verdict, generall or speciall, and whereas other Lawes except of Plurality of voyces, to make a verdict, our Law enforceth them all to agree in one, and whereas other Lawes leave them to their owne time and ease, and to part, and to meete againe; our Law dresse and imprison them in the hardest manner, without light or comfort, untill they bee agreed, in consideration of straightnesse and cohercion; it

is consonant, that the Law doe require in all matters brought to issue, that there be full prooffe and evidence, and therefore if the matter in it selfe bee of that surety as in simple Contracts, which are made by paroll, without writing, it alloweth wager of Law:

In issue upon the mere right (which is a thing hardly to discern (it alloweth wager of Battaille to spare Jurors, if time have wore out the markes and badges of truth : from time to time there have beene Statutes of limitation, where you shall find this mischiefe of Perjuries often recited ; and lastly which is the matter in hand, all Inheritances could not passe but by Acts overt and notorious, as by Deeds, Livery, and Records.

For Purchasors (*Bona fide*) it may appeare that they were ever favoured in our Law, as first by the great favour of Warranties, which were ever for the helpe of Purchasors, as whereby the Law in 5. *Edw.* 3. time, the Disseisor could not enter upon the Feoffee in regard of the Warranty, so againe the Collaterall warranty which otherwise as a hard Law, grew in doubt onely upon favour of Purchasors, so was the binding of Fines at the Common Law, the invention and practice of Recoveries, to defeat the Statute of intayles, and many more grounds and learnings are to bee found, respect the quiet of the Possession of Purchasors, and therefore though the Statute of 1 *Richard* 3. had provided for the Purchasor in some sort; by enabling the Acts and conveyances of *Cestuy que use*, yet nevertheless the State did not at all disable the Acts or charges of the Feoffees, and so as *Walmesley* Justice said 42. *Regina*, they played at double hand, for *Cestuy que use* might sell, and the Feoffee might sell, which was a very great uncertainty to the Purchasor.

For the fourth Inconvenience towards those that come in by Law, conveyances in Uses were like privilege

ledge places or liberties, for as there the Law doth not run, so upon such conveyances the Law could take no hold, but they were exempted from all Titles in Law, no man is so absolute Owner of his Possessions, but that the wisdom of the Law doth reserve certaine Titles unto others, and such persons come not in by the pleasure and disposition of the party, but by the Justice and consideration of Law, and therefore of all others they are most favour'd, and also they are principally three.

The Kings and Lords who lost the benefit of Attaindors, Fines for alienations, Escheates, Aydes, Herreots, Relieves, &c. 1.

The Defendants in *Pracipes* either reall or personal, for Debt and Damages, who lost the benefit of their Recoveries and Executions. 2.

Tenants in Dower, and by the Curtesie, who lost their Estates and Tythes. 3.

First for the King, no Law doth endow the King or Sovereigne with more from Suites and Actions, his Possessions from interruption and disturbance, his Right from limitation of time, his Patents and Gifts from all deceites and false suggestions: Next the King is the Lord, whose duties and rights the Law doth much favour, because the Law supposeth the Land did Originally come from him, for untill the Statute of *Quia emptores terrarum*, the Lords was not forced to distruct or dismember his Signiory or service, so untill 15. *Henry 7.* the Law was taken that the Lord upon his Title of Wardship should be put to a conizee of a Statute, or a Termor, so againe we see, that the Statute of *Mortmaine* was made to preserve the Lords Escheats and Wards: the Tenant in Dower is so much favoured, as that it is the common by word in the Law, that the Law favoureth three things.

1. Life.
2. Liberty.
3. Dower.

So in Case of Voucher, the Feme shall not be delayed, but shall recover against the Heire incontinent; so likewise of Tenant by courtesie it is called Tenancy by the Law of *England*, and therefore specially favoured, as a proper concept and invention of our Law, so as againe the Law doth favour such, as have antient Rights, and therefore it telleth us it is commonly said, that a Right cannot dye: and that ground of Law, that a Free hold cannot bee in suspence sheweth it well, insomuch that the Law will rather give the Land to the first commmer, which we call an Occupant, then want a Tenant to a Strangers Action.

And againe, the other ancient ground of Law of Remitter, sheweth that where the Tenant faileth without folly in the Defendant, the Law executeth the antient Right: To conclude therefore this point, when this practice of Feoffments in use did prejudice and dampnifie all those persons that the antient Common Law favour'd, and did absolutely crosse the wisdom of the Law, to have conveyances considerate, and not odious, and to have Tryall thereupon cleare and not inveighed, it is no marvaile that the Statute concludeth, that their subtile imaginations and abuses, tended to the utter subversion of the ancient Common Lawes of this Realme.

The third part of the Preamble giveth a touch of the Remedy, which the Statute intendeth to minister, consisting in two parts,

First, the expiration of Feoffments.

Secondly, the taking away of the hurt, damage, and deceit of the Uses, out of which have bin gathered two extremities of opinions.

The

The first Opinion is , that the intention of the Statute was to discontinue , and banish all conveyances in Use , grounding themselves both upon the words , that the Statute doth not speake of the extinguishment or extirpation of the Use *viz.* by an unity of Possession , but of an extinguishment or extirpation of the Feoffment &c. which is the conveyance it selfe.

Secondly, out of the words (abuse and errours) heretofore used and accustomed , as if Uses had not bene at the Common Law , but had onely an erroneous device or practice.

To both which I answer.

To the former , that the extirpation which the Statute meant was plaine , to bee of the Feoffees Estate, and not to the forme of conveyances.

To the latter I say , that for words (Abuse) that may bee an abuse of the Law which is not against Law , as the taking long Leases at this day of Land in *Capite* , to defraud Wardships is an abuse of the Law , which is not against Law , and by the words (Errour) the Statute meant by it, not a mistaking of the Law, but wandering or going astray or digressing from the ancient practice of the Law unto a buy course, as when we say (*Erravimus cum patribus juris*) it is not meant of ignorance onely , but of perversity , but to prove that the Statute meant not to suppress the forme of conveyances, there be 3. Reasons which are not answerable.

The first is, that the Statute in the very Branch thereof hath words, *De futuro* (s.) (that are seised, or hereafter shall be seised) and whereas it may be said that these words were put in, in regard of Uses suspended, by disseisins, and so no present seisin to the use,

untill a regresse of the Feoffees, that intendment is very particular, for commonly such Cases are brought in by Provisoers, or speciall Branches, and not intermixed in the body of a Statute, and it had beene easie for the Statute to have, or hereafter shall be seised upon any Feoffment &c. heretofore had or made.

The second Reason is upon the words of the Statute of Inrolments, which saith, that no hereditaments shall passe, &c. or any Use thereof, &c. whereby it is manifest, that the Statute meant to leave the forme of conveyance with the addition of a further Ceremony.

The third Reason I make is out of the words of the Provisor, where it is said, that no primer Seisin, Livery, no Fine, nor Alienation, shall bee taken for any Estate executed, by force of the Statute of 27. before the first of *May* 1536. but they shall be paid for Uses, made and executed in Possession for the time after, where the word (made) directly goeth to conveyances in use, made after the Statute, and can have no other understanding for the words (executed in Possession) would have served for the Case of regresse, and lastly which is more then all, if they have had any such intent, the Case being so generall and so plaine, they would have had words expresse, that every limitation of use made after the Statute, should have beene voyd, and this was the Exposition, as tradition goeth, that a Reader of *Grayes-Inne*, which Read soone after the Statute, was in trouble for, and worthily, who as I suppose was Boy, whose Reading I could never see; but I doe now insist upon it, because now againe some in an immoderate invective against Uses, doe relaps to the same opinion.

The second Opinion which I called a contrary extremity is, that the Statute meant onely to remedy the mischiefes in the Preamble, recited as they grew by reason of divided Uses; and although the like mischiefe may grow upon the contingent Uses, yet the Statute had no fore-

fore-sight of them at that time, and so it was meereley a new Case not comprised. Whereunto I answer, that it is the worke of the Statute to execute the divided Use, and therefore to make an Use voyd by this Statute which was good before, though it doth participate of the mischief recited in the Statute, where to make a Law upon a Preamble without a perview, which were grossly absurd. But upon the question what Uses are executed, and what not; and whether out of Possessions of a disseisor, or other Possessions out of privity or not, there you shall guide your Exposition according to the Preamble, as shall be handled in my next dayes Discourse, and so much touching the Preamble of this Law.

For the Body of the Law, I would wish all Readers that expound Statutes, to doe as Schollers are willed to doe, that is, first to seeke out the principall Verbe, that is to note and single out the materiall words, whereupon the Statute is framed, for there are in every Statute certaine words, which are as veines where the life and bloud of the Statute commeth, and where all doubts doe arise, and the rest are *Literæ mortuæ* fulfilling words.

The Body of the Statute consisteth upon two Parts.

First, a Supposition, or Case put, as *Anderson* 361. *Regina* calleth it.

Secondly, a Perview or Ordinance thereupon.

The Cases of the Statute are three and every one hath his purview.

The generall Case.

The Case of Coseoffees to the use of some of them.

And the generall Case of Feoffees to the Use or percemans of Rents or profits.

The generall Case is built upon Eight materiall words.

Four on the part of the Feoffees.

Three

Three on the part of *Cestuy que use*, and one common to them both.

The first material word on the part of the Feoffees is the word (Person) This excludes all alliances, for there can be no trust repos'd but in a person certaine, it excludes againe all Corporations, for they are evall'd to a Use certaine, for note on the part of the Feoffer over the Statute insists upon the word (Person) and in the part of *Cestuy que use*, that added body Politique.

The second word material is the word (Seis'd) this excludes Chattells, the reason is, that the Statute meant to remit the Common Law, and not the Chattells might ever passe by Testament or by paroll, therefore the Use did not pervert them, it excludes Rights, for it is against the Rules of the Common Law to Grant, or Transfere Rights, and therefore the Statute would execute them.

Thirdly, it excludes contingent Uses, because the seisin cannot be but to a Fee-simple of a Use, and when that is limited, the seisin of the Feoffee is spent, for *Littleton* tells us that there are but two seisins, one in *Domino ut de feodo*, the other *Vt de feodo et jure*, and the Feoffee by the Common Law could execute, but the Fee-simple to Uses present, and not Post Uses, and therefore the Statute meant not to execute them.

The third material word is (Hereafter) that bringeth in Conveyances made after the Statute, it brings in againe conveyances made before, and disturb'd by disseisin, and recontinued after, for it is not said inoff'd to Use hereafter seis'd.

The fourth word is (Hereditament) which is to be understood of those things whereof an Inheritance is in *Esse*, for if I grant a Rent charge *de novo* for life to a Use, this is good enough, yet there is no Inheritance in being of this Rent, this word likewise excludes Annuities and Uses themselves, so that a Use cannot be to a use.

The

The first word on the part of *Cestuy que use*, is the word (Use, Confidence or Trust) whereby it is plaine that the Statute meant to remedy the matter, and not words, and in all the Clauses it still carrieth the words.

The second word is the word (Person) againe which excludeth all aliances, it excludeth also alldent Uses which are not to Bodies, lively and naturall, as the building of a Church, the making of a Bridge, but here (as noted before) it is ever coupled with body Politicke.

The third word is the word (Other) for the Statute meant not to crosse the Common Law, now at this time Uses were growne to such a familiarity, as men could not thinke of Possession, but in course of Use, and so every man was seised to his owne Use, as well as to the Use of others; therefore because Statutes would not stirre nor turmoyle possessions settled at the Common Law, it putteth in precisely this word (Other) meaning the divided Use, and not the communed Use, and this causeth the Clause of joynt Feoffees to follow in a branch by it selfe, for else that Case had beene doubtfull upon this word (Other.)

The words that are common to both, are words expressing the conveyance whereby the Use ariseth, of which words, those that bred any question are (Agreement, Will, otherwise) whereby some have inferred that Uses might be raised by agreement paroll, so there were a consideration of mony, or other matter valuable, for it is expressed in the words before (Bargaines, Sale, and Contract) but of bloud, or linned; the error of which Collection appeareth in the word immediately following (s. Will) whereby they might as well include, that a man seised of Land might raise an Use by Will, especially to any of his Sonnes or Kindred, where there is a reall consideration, and by that reason meane betwixt this Statute, and the Statute of 32.

of Wills, Lands, were deviseable, especially to any man Kindred, which was clearely otherwise, and therefore those words were put in, not in regard of Uses raised by those conveniences, or without, or likewise by Will might be transferred, and there was a person seised to a Use, by force of that agreement or Will (s.) to the Use of the Assignee, and for the word (Otherwise) it should by the generality of the word, include a Disseisin to a Use, but the whole scope of the Statute crosseth that which was to execute such Uses as were confidences and trust, which could not be in Case of Disseisin, for if there were a commandment precedent, then the Land was vested in *Cestuy que use* upon the entry, and if the Disseisin were of the Disseisors owne head then no trust, and thus much for the case of Supposition of this Statute, here follow the ordinance and purview thereupon.

The Purview hath two parts, the first *Operatio Statuti*, the effect that the Statute worketh, and there is *Modus operandi*, a fiction, or explanation how the Statute doth worke that effect. The effect is, that *Cestuy que use* shall be in possession of like Estate as he hath in the Use, the fiction *quomodo* is; that the Statute will have the Possession of *Cestuy que use*, as a new body compounded of matter and forme, and that the Feoffees shall give matter and substance, and the Use shall give forme and quality, the materiall words in the first part of the purview are foure.

The first words are (Remainder) and Reverture, the Statute having spoken before of Uses in Fee-simple, in Tayle, for life, or yeares addeth, or otherwise (in Remainder reverture) whereby it is manifest, that the first words are to be understood of Uses in Possession, for there are two substantiall and essentiall differences of Estates, the one limiting the times, (for all Estates are but times of their continuances) the former maketh little difference of Fee-simple, Fee Tayle for life or yeares, and the

the other maketh difference of Possession as remainder, all other differences of Estate are but accidents, as shall be said hereafter, these two the Statute meant to take hold of, and at the words, Remainder, and Reversion it stopps, it addes not wordes, (Right, Title, or possibility) nor it hath not generall words (or otherwise) it is most plaine, that the Statute meant to execute no inferiour Uses. to Remainder or Reversion, that is to say, no possibility or contingences, but Estates, onely, such as the Feoffees might have executed by Conscience made : note also the very Letter of the Statute doth take notice of a difference betweene an Use in Remainder, and an Use in Reversion, which though it cannot properly, because it doth not depend upon particular Estates, as Remainders doe, neither did then before the Statute. draw any Tenures as Reversions doe, yet the Statute intends that there is a difference when the particular Use, and the Use limited upon the particular Use are both new Uses, in which Case it is a Use in Remainder, and where the particular Use is a new Use, and the remnant of the use is the old use, in which Case it is a use in Reversion.

The next materiall word is (from henceforth) which doth exclude all concept of relation that *Cestuy que use* shall not come in, as from the time of the first Feoffments, to use as *Bradwells* concept was in 14. *Henry 8.* that is, the Feoffee had granted a Rent charge, and *Cestuy que use* had made a Feoffment in Fee, by the Statute of 1. *Richard 3.* the Feoffee should have held it discharged, because the Act of *Cestuy que use* shall put the Feoffee in, as if *Cestuy que use* had bene seised in from the time of the first Use limited, and therefore the Statute doth take away all such ambiguities, and expresleth that *Cestuy que use* shall bee in Possession from henceforth,

that is, from the time of the Parliament for Uses then in being, and from the time of the execution for Uses limited after the Parliament:

The third materiall words are (Lawfull seisin state and Possession) not a Possession in Law onely, but a seisin in Tayle, not a Title to enter into the Land, but an actuall estate.

The fourth words are of and in such Estates as they had in the Use, that is to say, little Estates, Fee-simple, Fee Tayle, life for yeares at Will and Possession and Reversion, which are the substantiall differences of Estates, as was said before, but both their latter Clauses are more fully perfected and expounded, by the branch of the fiction of the Statute which follows.

This branch of Fiction hath three materiall words or Clauses: the first materiall Clause is, that the Estate, Right, Title, and Possession that was in such person &c. shall bee in *Cesty que use*, for that the matter and substance of the Estate of *Cesty que use* is the Estate of the Feoffee, and more hee cannot have, so as if the Use were limited to *Cesty que use* and his Heires, and the Estate out of which it was limited was but an Estate for life, *Cesty que use* can have no Inheritance, so if when the Statute came the Heire of the Feoffee had not entred after the death of his Ancestor, but had onely a Possession in Law, *Cesty que use* in that Case should not bring an Assize before entry, because the Heire of the Feoffee could not, so that the matter whereupon the Use must work is the Feoffees Estate: but note here, whereas before when the Statute speakes of the Uses, it spake onely of Uses in Possession, Remainder and Treverter, but not in Title or Right, now when the Statute speakes what shall bee taken from the Feoffee, it speakes of Tide and Right, so that the Statute takes
more

more from the Feoffee then it executes presently in Case, where there are uses in contingency which are but Titles.

The second word. is (Cleerely) which seemes properly and directly to meet with the concept of *Sentilla Iuris* as well as the words in the Preamble of extirping and extinguishing such Feoffments, so is their Estates is cleerely extinct.

The third materiall Clause is after such quality, manners, forme and condition as they had in the Use; so as now as the Feoffees Estate gives matter, so the Use gives forme; and as in the first Clause the Use was indowed with the Possession in points of Estate, so there it is indowed with the Possession in all accidents and Circumstances of Estate, wherein first note that it is grosse and absurd to expound the forme of the Use any whit to destroy the substance of the Estate as to make a doubt, (because the use gave no Dower or Tenancy by the courtesie) that therefore the Possession when it is transferred would doe so likewise: no, but the Statute meant such quality, manner, forme and condition; as it is not repugnant to the corporall presence and possession of the Estate.

Next for the word (Condition) I doe not hold it to be put in for Uses upon condition, though it be also comprized within the generall words, but because I would have things stood upon learnedly, and according to the true sence, I hold it but for an explaining or word of the effect, as it is in the Statute of 26. of *Treasons*, where it is said, that the Offender shall be attained of the evert Fact by men of their condition (in this place) that is to say, of their degree or sort, and so the word Condition in this place is no more, but in like quality, manner, forme, and degree or sort, so as all these words amount, but to (*modo et forma.*) Hence therefore all circumstances, of Estate are comprehended as sole seisin, or

joyntly seisin, by intierries, or by moyties, a circumstance of Estate to have age as comming in by Discent, or not age as Purchasor, or circumstance of Estate descendable to the Heire of the part of the Father, or of the part of the Mother. A circumstance of Estate conditionall or absolute, remitted or not remitted with a condition of inter-marriage, or without all these are accidents and circumstances of Estate, in all which the Possession shall entue the nature and quality of the Use, and this much of the first Case which is the generall case.

The second Case of the joynt Feoffees needs no Exposition, for it peruseth the penning of the generall case, onely this I will note, that although it had beene omitted, yet the Law upon the first Case would have beene taken as the case provided, so that it rather in explanation than an addition, for turne that Case the other way, that one were infeoffed to the Use of himselfe, I hold the Law to bee, that in the former Case they shall bee seised joyntly, and so in the latter Case *Cestuy que use* shall be seised solely; for the word (Other) it shall bee qualified by the construction of Cases, as shall appeare when I come to my Division; but because this Case of Coseoffees to the use of one of them was a generall Case in the Realme, therefore they fore-saw it, oppres'd it precisely, and passed over the case *E converso*, which was but especiall; and care, and they were loth to bring in this Case, by incerting the word onely unto the first Case (S) to have penned it to the use onely of other persons, for they had experience what doubt the word onely bred upon the Statute of 1. Richard 3. after this third Case, and before the third Case of Rents comes in the second saving, and the reason of it is worth the noting, why the savings are interlaced before the third Case, the reason of it is, because the third case needeth no saving, and the first two Cases did

did need savings, and that is the reason of that againe.

It is a generall ground, that where an Act of Parliament is Donor, if it be penned with an (*ac si*) it is not a saving, for it is a speciall gift, and not a generall gift, which includes all Rights, and therefore in 11 *Henry 7.* whereupon the alienation of Women, the Statute intitles the Heire of him in remainder to enter, you finde never a Stranger, because the Statute gives entry not (*Simpliciter*) but within an (*ac si*) as if no Alienation had beene made, or if the feme had beene naturally dead, Strangers that had right might have entred, and therefore no saving needs, so in the Statute of 32. of Leases, the Statute enacts, that the Leases shall be good and effectuell in Law, as if the lessor had beene seised of a good and perfect Estate in Fee-simple, and therefore you finde no saving in the Statute, and so likewise of divers other Statutes doe likewise, where a Statute doth make a gift or Title good, specially against certaine persons there needs no saving, except it bee to exempt some of those persons, as in the Statute of 1. *R. 3.* now to apply this to case of Rents, which is penned with an (*ac si*) (*s.*) as if a sufficient grant, or lawfull conveyance had beene made, or executed by such as were seised, why if such a grant of a Rent had beene made, one that had an antient Right might have entred and have avoyded the charge, and therefore no saving needeth, but the second first Cases are not penned with an (*ac si*) but absolute, that *Cestuy que use* shall be adjudged in Estate and Possession, which is a Judgement of Parliameint stronger then any Fine, to bind all Rights, nay it hath further words (*s.*) in lawfull Estate and Possession, which maketh it the stronger then any in the first Clause. for if the words onely had stood upon the second Clause (*s.*) that the Estate of the Feoffee should bee in *Cestuy que use*, then perhaps the gift should have beene speciall, and so the saving superfluous, and this note is materiall in regard

gard of the great question, whether the Feoffees may make any regresse, which Opinion (I mean that no regresse is left unto them) is principally to bee argued out of the saving; as shall be now declared: for the savings are two in number, the first saveth all Strangers Rights, with an exception of the Feoffees: the second is a saving out of the exception of the first saving (s.) of the Feoffees in case where they claime to their own proper use: it had beene easie in the first saving out of the Statute) other then such persons as are seised, or hereafter should bee seised to any use) to have added to these words (executed by this Statute) or in the second saving to have added unto the words (clayming to their proper use) these words (or to the use of any other, and executed by this Statute, but the regresse of the Feoffee is shut out betweene the two savings, for it is the right of a Person clayming to an Use, and not unto his owne proper use, but it is to bee added, that the first saving is not to bee understood as the letter implyeth, that Feoffees to use shall bee barr'd of their regresse, in Case that it bee of another Feoffment then that whereupon the Statute hath wrought, but upon the same Feoffment, as if the Feoffee before the Statute had beene disseised, and the disseis'd had made a Feoffment in Fee to *I. D.* his use, and then the Statute came, this executeth the Use of the second Feoffment, but the first Feoffees may make a regresse, and they yet claime to an Use, but not by that Feoffment upon which the Statute hath wrought.

Now

NOW followeth the third Case of the Statute touching execution of Rents, wherein the materiall words are foure :

First, whereas divers persons are seised, which hath bred a doubt that it should onely goe to Rents' in Use, at the time of the Statute; but it is Explained in the Clause following (S) as if a grant had beene made to them by such as, are, or shall be seised.

The second word is (*Profit*) for in the putting of the Case, the Statute speaketh of a Rent; but after in the Purview is added these words (or *profit*.)

The third word is (*ac ft*) (S) that they shall have the (S) as if a sufficient grant or lawfull conveyance had bin made and Executed unto them.

The fourth words are the words of Liberty and Remedies attending upon such Rent (S) that hee shall distraine, &c. and have such Suits, Entries; and Remedies relying againe with an (*ac ft*) as if the grant had beene made with such collaterall penalties and advantages.

Now for the Provisoës, the Makers of this Law did so abound with policy and discerning, as they did not onely fore-see such mischiefs as were incident to this new Law immediately, but likewise such as were consequent in a remote degree, and therefore besides the expresse Provisoës, they did adde three new Provisoës, which are in themselves subtractive Lawes, for foreseeing that by the Execution of Uses, Wills formerly made should be over-throwne: They made an ordinance for Wills, fore-seeing likewise, that by execution of Uses, women should be doubly advanced: They made an ordinance for Dowers and Jointures, foreseeing againe, that the execution of Uses would make

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franktenement passe by Contracts paroll. They made an ordinance for inrollments of Bargaines and Sales, the two former they inserted into this Law, and the third they distinguished into a Law apart, but without any preamble as may appeare, being but a Proviso to this Statute, besides all these provisionall Lawes; and besides five Provisors, whereof three attend upon the Law of Jointure, and two borne in *Wales*, which are not materiall to the purpose in hand. There are sixe provisos which are naturall and true members and limbs of the Statute, whereof foure concerne the part of *Cestuy que use*, and two concerne the part of the Feoffees: The foure which concerne the part of *Cestuy que use*, tend all to save him from prejudice by the execution of the estate.

The first saveth him from the extinguishment of any Statute or Recognizance, as if a man had an Extent of a hundred Acres, and an Use of the inheritance of one. Now the Statute executing the possession to that one, would have extinguisht his Extent being intire in all the rest: or as if the Commissioner of a Statute having ten Acres lyable to the Statute had made a Feoffment in Fee to a Stranger of two, and after had made a Feoffment in Fee to the use of the Conuzee and his Heires: And upon this Proviso there arise three Questions: First, whether this Proviso were not superfluous, in regard that *Cestuy que use* was comprehended in the generall, saving though the Feoffees be excluded.

Secondly, whether this Proviso doth save Statutes or Executions, with an apportionment and Entire.

Thirdly, because it is penned indefinitely, in point of time, whether it shall goe to Uses limited after the Statute, as well as to those that were in being all the time of the Statute, which doubt is rather inforced by this Reason, because there was for Uses at the time of the Statute, for that the Execution of the Statute might be

be wayved, but both possession and Use since the Statute, may be wayved.

The second proviso saveth *Cestuy que use* from the charge of *primer Seisin liveries Ouster le maines*, and such other duties to the King, with an expresse limitation of Time that he shalbe discharged for the time past, and charged for the time to come in a King S: *May 1536.* to be *communis terminus*.

The third proviso doth the like for Fines, Relieves, and Herriots, discharging them for the time past, and speaking nothing of the Time to come.

The fourth proviso giveth to *Cestuy que use* all collaterall benefits of Vouchers, Aides, priers, Actions of waste, Trespasse, condicions broken, and which the Feoffees might have had; and this is expressly limited for Estates executed before 1. *May 1536.* and this proviso giveth occasion to intend that none of these benefits would have beene carried to *Cestuy que use* by the generall words in the body of the Law (S) that the Feoffees estate, right, Title, and possession, &c.

For the two provisos on the part of the Tertenant, they both concerne the saving of strangers from prejudice, &c.

The first saves Actions depending against the Feoffees, that they shall not abate.

The second saves Wardships, Liveries, and *Ouster Le maines*, whereof Title was vested in regard of the Heire of the Feoffee, and this in case of the King only.

What Persons may be seised to an Use, and what not.

What persons may be Cesty que use, and what not.

What Persons may declare an use, and what not.

THough I have opened the Statute in order of words, yet I will make my Division in order of matter, viz.

1. The raising of Uses.
2. The interruption of Uses.
3. The Executing of Uses.

Againe, The raising of Uses doth easily divide it selfe into three parts.

The persons that are Actors to the Conveyance to Use.

The Use it selfe.

The forme of the Conveyance.

Then it is first to be seene what persons may be seised to an Use, and what not, and what persons may be *Cesty que use*, and what not.

The King cannot be seised to an Use; no, not where he taketh in his naturall body and to some purpose as a common person, and therefore if Land be given to the King, and *I. D. per terme de lour vies*, this Use is void for a moiety.

Like Law is, if the King be seised of Land in the right of his Dutchy of *Lancaster*, and covenanteth by his letters Pattents under the Dutchy Seale to stand seised to the use of his Sonne, nothing passeth.

Like Law, if King *R. 3.* who was Feoffier to divers uses before he took upon him the Crowne, had after hee was King by his Letters pattents granted the Land over, the uses had not bin renewed.

The Queene (speaking not of an Imperiall Queene
by

by marriage) cannot be seised to an use, though she be a body inabled to grant and purchase without the King : Yet in regard of the government and interest the King hath in her possession she cannot be seised to an use.

A Corporation cannot be seised to an use, because their capacity is to a use certaine ; againe, because they cannot Execute an Estate without doing wrong to their Corporation or Founder ; but chiefly because of the letter of this Statute which (in any clause when it speaketh of the Feoffee) resteth only upon the word (person,) but when it speaketh of *Cesty que use*, it addeth person, or body politicke.

If a Bishop bargain or sell Lands whereof hee is seised in the right of his See ; this is good during his life ; otherwise it is where a Bishop is intcoffed to him and his Successors to the use of *I. D.* and his heires, that is not good, no not for the Bishops life, but the use is meerely voyd.

Contrary Law, of Tenant in Tayle, for if I give Land in Tayle by Deed since the Statute to *A.* to the use of *B.* and his heires ; *B.* hath a fee-simple determinable upon the death of *A* without issue. And like Law, though doubtfull before the Statute was, for the chiefe reason which bred the doubt before the Statute was, because Tenant in Tayle could not Execute an Estate without wrong ; but that since the Statute is quite taken away, because the Statute saveth no right of intayle ; as the Statute of *1. R. 3.* did, and that reason likewise might have bin answered before the Statute, in regard of the common recovery.

A feme Covert and an Infant, though under yeares of discretion, may be seised to an use ; for aswell as Land might descend unto them from a Feoffee to use ; so may they originally be intcoffed to an use ; yet if it be before the Statute, and they had (upon a Subpoena brought) executed their Estate during the coverture or infancy

they might have defeated the same, and when they should have beene seized againe to the Use, and not to their owne use, but since the Statute, no right is saved unto them.

If a feme Covert or an Infant be enfeoffed to an Use precedent since the Statute, the Infant or Baron come too late to discharge or roote up the Feoffment; but if an Infant be enfeoffed to the Use of himselfe and his Heires, and *I. D.* pay such a summe of money to the Use of *I. G.* and his Heires, the Infant may disagree and overthrow the contingent Use.

Contrary Law, if an Infant be enfeoffed to the Use of himselfe for life, the remainder to the Use of *I. S.* and his Heires, he may disagree to the feoffment, as to his owne Estate, but not to devest the remainder, but it shall remaine to the benefit of him in remainder.

And yet if an Attainted person be enfeoffed to an Use, the Kings Title after Office found, shall prevent the Use, and Relate above it but untill office the *Cesty que use* is seised of the Land.

Like Law of an Alien, for if Land be given to an Alien to an Use, the Use is not voyd *ab initio*: Yet neither Alien or Attainted person can maintaine an Action to defend the Land.

The Kings Villeine if he be enfeoffed to an Use, the Kings Title shall relate above the Use, otherwise in Case of a common person.

But if the Lord be enfeoffed to the Use of his Villeine, the Use neither riseth, but the Lord is in by the Common Law, & not by the Statute discharged of the use.

But if the husband be enfeoffed to the use of his wife for yeares, if he die, the wife shall have the Terme, and it shall not inure by way of discharge, although the Husband may dispose of the wives Terme.

So if the Lord of whom the Land is held be enfeoffed to the Use of a person Attainted, the Lord shall not hold by

by way of discharge of the Use, because of the Kings Title. *An. diem & vastum.*

A person uncertaine is not within the Statute, nor any Estate in *nutibus* or suspence executed, as if I give Land to *I. S.* the remainder to the right Heires of *I. D.* to the use of *I. N.* and his Heire; *I. N.* is not seised of the Fee-simple of an Estate *per vit.* of *I. S.* till *I. D.* be dead, and then in Fee-simple.

Liker Law if before the Statute, I give Land to *I. S.* *per auter vie* to an Use, and *I. S.* dyeth, leaving *Cestuy que use*, whereby the free-hold is in Suspence, the Statute commeth, and no occupant entreth; the Use is not executed out of the free-hold in suspence. For the occupant the Disseisor the Lord by Escheate: The Feoffee upon consideration, not having notice, and all other persons which shalbe seised to Use, not in regard of their persons but of their Title. I referre them to my division touching disturbance and interruption of Uses.

It followeth now to see what person may be a *Cestuy que use*, the King may be *Cestuy que use*; but it behooveth both the declaration of the Use and the conveyance it selfe, to be matter of Record, because the Kings Title is compounded of both, I say, not appearing of Record, but by conveyance of Record. And therefore if I covenant with *I. S.* to leavy a Fine to him to the Kings use, which I do accordingly: And this deed of Covenant be not inrol'd, and the Deed be found by office, the use vesteth not, *Econverso* inrol'd. If I covenant with *I. S.* to infeoffe him to the Kings use, and the Deed be inrol'd and the feoffment also be found by office, the use vesteth.

But if I leavy a fine, or suffer a Recovery to the Kings use, and declare the use by Deede of Covenant Enrol'd, though the King be not party, yet it is good enough.

A Corporation may take an Use, & yet it is not material whether the feoffment or the Declaration be by deed; but I may infeoffee *I. S.* to the use of a Corporation and this use may be averred.

A

A Use to a person incertaine is not voyd in the first limitation, but executeth not till the person be in (*esse*,) so that this is positive, than an Use shall never be in Obeysance, as a Remainder may be, but ever in a person certaine upon the words of the Statute, and the Estate of the Feoffees shall be in him or them which have the Use: The reason is, because no confidence can be reposed in a person unknowne and uncertaine; and therefore if I make a feoffment to the use of *I. S.* for life, and then to the use of the right Heires of *I. D.* the remainder is not in Obeysance, but the Reversion is in the Feoffor, (*quousque*.) So that upon the matter all persons uncertaine in Use, are like conditions or limitations precedent.

Like Law if I Enfeoffee one to the use of *I. S.* for yeares, the remainder to the right Heires of *I. D.* This is not executed obeysance, and therefore not void.

Like Law, if I make a Feoffment to the use of my wife that shall be, or to such persons as I shall maintaine, though I limit no particular Estate at all; yet the use is good, and shall in the interim returne to the Feoffor.

Contrary Law, if I once limit the whole Fee-simple of the Use out of Land, and part thereof to a person incertaine, it shall never returne to the Feoffor by way of fraction of the Use; but looke how it should have gone unto the Feoffor; if I begin with a contingent Use, so it shall go to the remainder; if I intaile a contingent Use, both Estates are alike subject to the contingent Use when it falleth; as when I make a Feoffment in Fee to the use of my wife for life the remainder to my first begotten son; I having no Sonne at that time, the remainder to my brother and his heires if my wife dye before I have any son, the Use shall not be in me, but in my brother. And yet if I marry againe and have a Sonne, it shall devest from my brother, and be in my Sonne, which is the skipping they talke so much of.

So if I limit an Use joyndly to two persons; not in (*Esse*) and the one commeth to bee in *esse*, hee shall take the intire Use, and yet if the other afterward come in *esse*, hee shall take joyndly with the former, as if I make a Feoffment to the use of my Wife that shall bee, and my first begotten Sonne for their Lives, and I marry my Wife taketh the whole Use, and if I afterwards have a Sonne, hee taketh joyntly with my Wife.

But yet where words of obeyance worke to an Estate, executed in course of Possession, it shall doe the like in Use, as if I infeoffee *A.* to the use of *B.* for life, the remainder to *C.* for life, the remainder to the right Heires of *B.* this is a good remainder executed.

So if I infeoffee *A.* to the use of his right Heires *A.* is in the Fee-simple, not by the Statute, but by the Common Law.

Now are wee to examine a speciall point of the disability of persons as to take by the Statute, and that upon the words of the Statute, where divers persons are seised to the use of other persons, so that by the letter of the Statute, no use is conteyned, but where the Feoffor is one, and *Cestuy que use* is another.

Therefore it is to bee seene in what Cases the same persons shall be both seised to the use and *Cestuy que use*, and yet in by the Statute, and in what Cases they shall be diverse persons, and yet in by the Common Law, wherein I observe unto you three things: First, that the letter is full in the point. Secondly, that it is strongly urged by the Clause of joynt Estates following. Thirdly, that the whole scope of the Statute was to renut the Common Law, and never to intermeddle where the Common Law executed an Estate, therefore the Statute ought to bee expounded, that where the party seised to the use, and the *Cestuy que use* is one per-

son, hee never taketh by the Statute except there bee a direct impossibilitie or impertinency for the use, to take effect by the Common Law.

And if I give Land to *I. S.* to the use of himselfe and his Heires, and if *I. D.* pay a summe of mony, then to the use of *I. D.* and his Heires, *I. S.* is in of an Estate for life, or for yeares, by way of abridgment of Estate in course of Possession, and *I. D.* in of the Fee-simple by the Statute.

So if I bargain and sell my Land after seven yeares, the Inheritance of the Use onely passeth, and there remains an Estate for yeares by a kind of subtraction of the Inheritance or *occupyer* of my Estate, but meerely at the Common Law.

But if I enfeoffee *I. S.* to the use of himselfe intayle, and then to the use of *I. D.* in Fee, or Covenant to stand seild to the use of my selfe in tayle, and to the use of my Wife in Fee, in both these Cases the Estate tayle is executed by this Statute, because an Estate tayle cannot be reoccupied out of a Fee-simple being a new Estate, and not like a particular Estate for life or yeares, which are but portions of the absolute Fee, and therefore if I bargain and sell my Land to *I. S.* after my death without Issue, it doth not leave an Estate tayle in mee, nor vesterh any present Fee in the bargaines, but is an use expectant.

So if I enfeoffee *I. S.* to the use of *I. D.* for life, and then to the use of himselfe and his Heires, he is in of the Fee-simple meerely in course of Possession, and as of a Reversion, and not of a remainder.

Contrary Law, if I enfeoffee *I. S.* to the use of *I. D.* for life, then to the use of himselfe for life, the remainder to the use of *I. N.* in Fee, now the Law will not admit fraction of Estates, but *I. S.* is in with the rest by the Statute.

So if I infeoffee *I. S.* to the use of himselfe, and a Stranger,

Stranger, they shall be both in by the Statute, because they could not take joyntly taking by severall Titles.

Like Law if I infeofee a Bishop and his Heires to the use of himselfe, and his successors, he is in by the Statute in the right of his Sea.

And as I cannot raise a present use to one out of his owne seisin, so if I limit a contingent or future use to one being at the time of limitation not seisd, but after become seised at the time of the execution of contingent use, there is the same reason and the same Law, and upon the same difference which I have put before.

As if I covenant with my Sonne, that after his Marriage I will stand seised of Land to the use of himselfe and his Heires, and before Marriage I enfeofee him to the use of himselfe and his Heires, and then hee marryeth, hee is in by the Common Law, and not by the Statute, like Law of a bargain, and sale.

But if I had let to him for life onely, then hee should have beene in for life onely by the Common Law, and of the Fee-simple by Statute. Now let mee advise you of this, that it is not a matter of subtilty or concept to take the Law right, when a man commeth in by the Law in course of Possession, and where hee commeth in by the Statute in course of Possession, but it is materiall for the deciding of many Causes and Questions, as for Warranties, Actions, Conditions, Wayners, Suspitions, and divers other Provifoos.

For example, a mans Farmer committed waste

after he in the Reversion covenanteth to stand seisd to the use of his Wife for life, and after to the use of himselfe and his Heires, his Wife dyes, if hee bee in his Fee untouch'd he shall punish the wast, if he be in by the Statute he shall not punish it.

So if I bee infeofed with Warranty, and I covenant with my Sonne to stand seised to the use of my selfe for life, and after to him and his Heires; if I bee in by the Statute, it is cleare my Warranty is gone, but if I be in by the Common Law it is doubtfull.

So if I have an eigne Right, and be infeofed to the use of *I. S.* for life, then to the use of my selfe for life, then to the use of *I. D.* in Fee, *I. S.* dyeth, if I be in by the Common Law, I cannot wayve my Estate having agreed to the Feoffment: but if I am in by the Statute, yet I am not remitted, because I come in by my owne Act, but I may wayve my Use, and bring an Action presently, for my Right is saved unto me by one of the savings in the Statute. Now on the other side it is to bee seene, where there is a seisin to the use of another person, and yet it is out of the Statute which is in speciall Cases upon the ground wheresoever *Cestuy que use* had remedy, for the Possession by course of Common Law, there the Statute never worketh, and therefore if a disseisin were committed to an Use, it is in him by the Common Law upon agreement, so if one enter as occupant to the Use of another, it is in him till disagreement.

So if a feme infeofe a man (*Chausa matrimonij praelocuti*) she hath remedy for the Land againe by course of the Law, and therefore in those speciall Cases the Statute worketh not, and yet the words of the Statute are general, (where any person stands seised by force

of any Fine, Recovery; Feoffment, bargain and sale, agreement or otherwise.) but yet the same is to bee restrained for the reason aforesaid.

It remaineth to shew what persons may limit and declare an Use, wherein we must distinguish, for there are two kinds of Declarations of Uses, the one of a present Use upon the first conveyance, the other upon a power of revocation or new declaration, the latter of which I referre to the division of revocation, now for the former.

The King upon his Letters Patents may declare an Use, though the Patent it selfe implyeth an Use, if none be declared.

If the King gives Lands by his Letters to *J. S.* and his Heires to the use of *J. S.* for life, the King hath the Inheritance of the use by impliation of the Patent, and no Office needeth for impliation out of matter of Record, amounteth ever to matter of Record.

If the Queene give Land to *J. S.* and his Heires to the use of all the Church-wardens of the Church of *Dale*, the Patentee is seised to his owne use, upon that confidence or intent, but if a common person had given Land in that manner, the use had bin voyd by the Stat. of 23. *H.8.* and the use had returned to the feoffor & his heires, A Corporation may take an Use without deed, as hath bin said before, but can limit no Use without Deed.

An Infant may limit an Use upon a Feoffment, Fine, or Recovery, and he cannot Countermand or avoyd the Use, except hee avoyd the conveyance, contrary if an Infant covenant in consideration of bloud or Marriage to stand seised to an Use, the Use is meereley voyd.

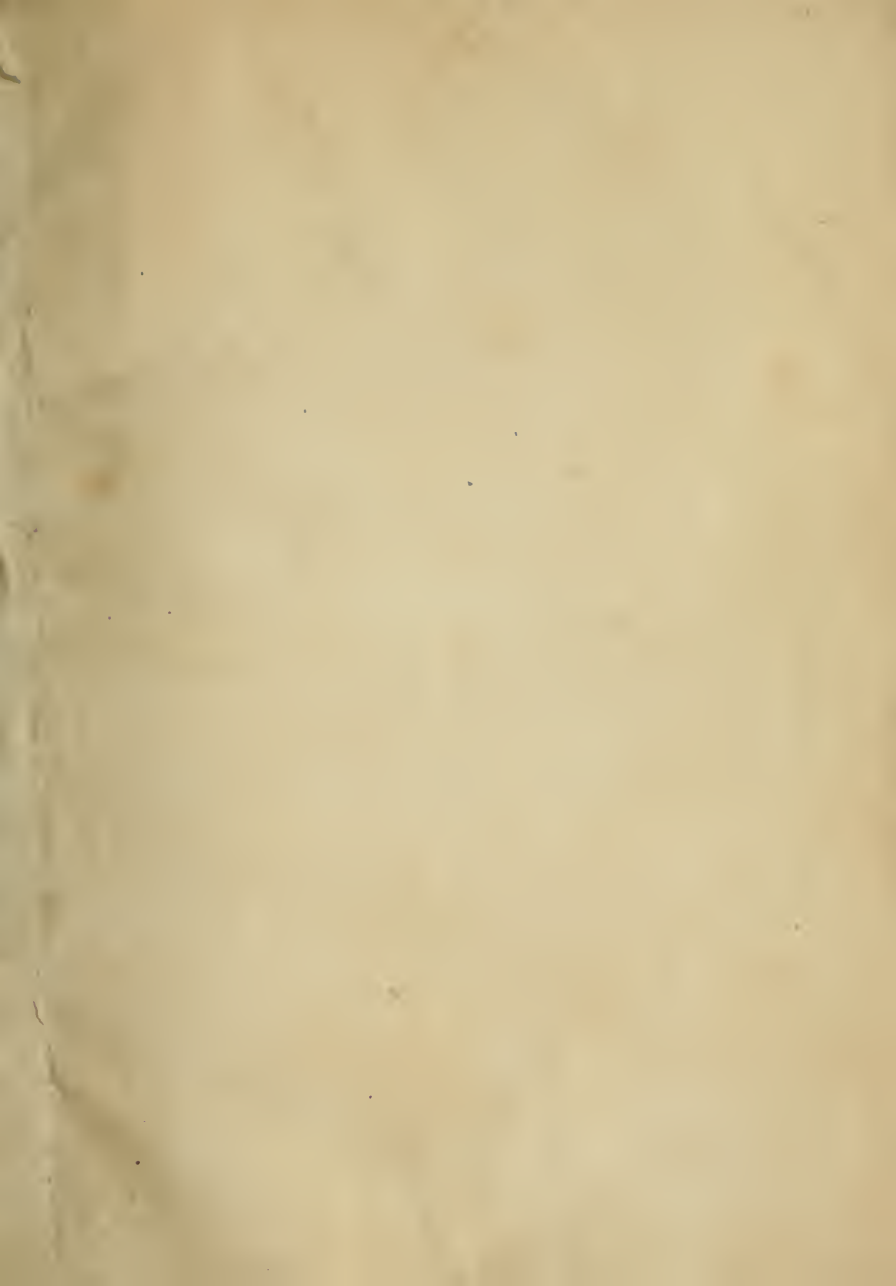
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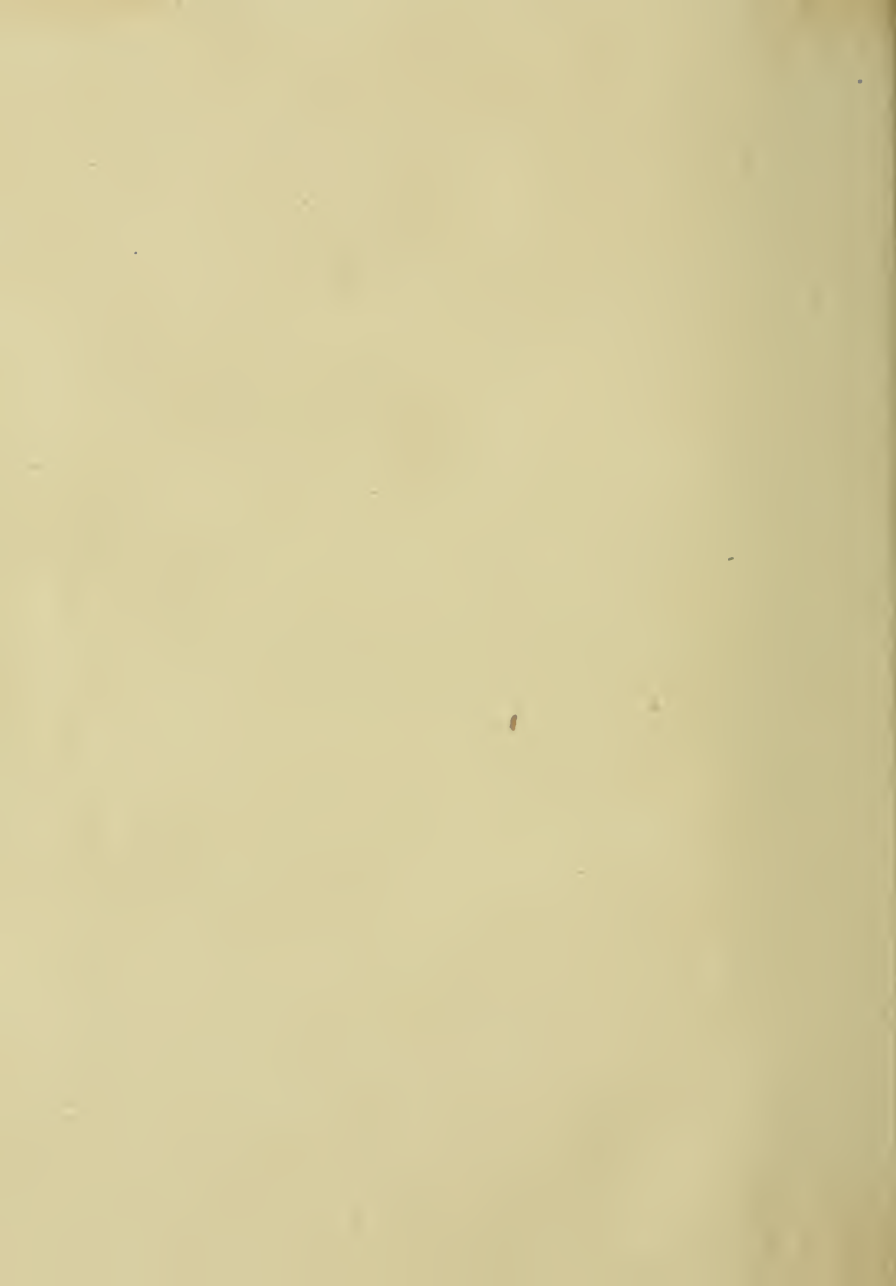
If an infant bargain and sell his Land for mony, for Commons, or Teaching, it is good with averment, if for mony otherwise, if it be proved it is avoydable, if for mony recited and not paid it is voyd, and yet in the case of a man of full age the recitall sufficeth.

If Barron and feme be seised in the right of the feme, or by joynt Purchase during the Coverture, and they joyne in a Fine, the Barron cannot declare the Use for longer time then the Coverture, and the feme cannot declare alone, but the Use goeth according to the limitation of Law, unto the feme and her Heires, but they may both joyne in Declaration of the Use in Fee, and if they sever, then it is good for so much of the Inheritance as they concurr'd in, for the Law avoucheth all one as if they joynd, as if the Baron declare an Use to *I. S.* and his Heires, and the Feme another to *I. D.* for life, and then to *J. S.* and his Heires, the Use is good to *I. S.* in Fee.

And if upon examination the Feme will declare the Use to the Judge, and her Husband agree not to it, it is voyd, and the Barons Use is onely good, the rest of the Use goeth according to the limitation of Law.

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